

REGULATIONS GOVERNING LICENSING OF PESTICIDE BUSINESSES OPERATING UNDER AUTHORITY OF VIRGINIA PESTICIDE CONTROL ACT (2VAC20-40-10 THROUGH 2VAC20-40-110).

1 THIS REGULATION SUPERSEDES 2VAC20-40-10 THROUGH 2VAC 20-40-120
2 REGULATIONS GOVERNING LICENSING OF PESTICIDE BUSINESSES OPERATING
3 UNDER AUTHORITY OF VIRGINIA PESTICIDE CONTROL ACT ADOPTED BY THE
4 PESTICIDE CONTROL BOARD ON SEPTEMBER 13, 1990, EFFECTIVE JANUARY 2, 1991
5
6 AUTHORITY: §§ 3.1-249.30, 3.1-249.46, 3.1-249.48, 3.1-249.49, 3.1-249.50 AND 3.1-249.76 OF
7 THE CODE OF VIRGINIA (1950), AS AMENDED
8
9

10 CHAPTER 40

11 Part I

12 Definitions

13 2VAC20-40-10. Definition of terms.

14 The following words and terms, when used in this chapter, shall have the following meanings,
15 unless the context clearly indicates otherwise. An asterisk following a definition denotes that the
16 definition has been taken from Article 1 (§3.1-249.27 et seq.) of Chapter 14.1 of Title 3.1 of the
17 Code of Virginia.

18 "Act" means the Virginia Pesticide Control Act.

19 "Board" means the Pesticide Control Board.*

20 ~~"Bond" means a written instrument issued or executed by a bonding, surety, or insurance company~~
21 ~~licensed to do business in the Commonwealth, or otherwise approved by the board, guaranteeing~~
22 ~~the fulfillment of the agreement between the licensee and the customer.*~~

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1 "Bulk pesticide" means any registered pesticide concentrate which is transported or held in an
2 individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or
3 greater than 100 pounds net dry weight.

4 "Certification" or "certified" means the recognition granted by the Pesticide Control Board to an
5 applicator upon satisfactory completion of board approved requirements.*

6 "Commercial applicator" means any ~~applicator~~ person who has completed the requirements for
7 certification as determined by the board, ~~including appropriate training and time in service, to apply~~
8 ~~for a certification, and who~~ to uses or supervises the use of any pesticide for any purpose or on any
9 property other than as provided in the definition of private applicator.*

10 "Commissioner" means the Commissioner of Agriculture and Consumer Services.*

11 "Department" means the Department of Agriculture and Consumer Services.*

12 "EPA" means the United States Environmental Protection Agency.

13 "FIFRA" means The Federal Insecticide, Fungicide, and Rodenticide Act as amended, and herein
14 incorporated by reference.

15 "Licensed" or "licensee" means those businesses which, upon meeting the requirements established
16 by the Pesticide Control Board, are issued a license to engage in the sale, storage, distribution,
17 recommend the use, or application of pesticides in Virginia in exchange for compensation.*

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1 "Limited quantities" means purchases, at cost, for resale, of less than \$50,000 annually per outlet of
2 products containing ~~non-restricted~~ non-restricted use pesticide active ingredients.

3 "Pest management consultant" means any person, who may or may not apply pesticides himself,
4 who has obtained a business license in accordance with the requirements listed below, and who is
5 authorized by this chapter to provide technical advice, supervision or aid, or recommendations for
6 ~~restricted use~~ pesticide application commercially in Virginia.

7 "Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying,
8 repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or
9 animal life or viruses or bacterium, except viruses on or in living man or other animals, which the
10 eCommissioner shall declare to be a pest, (ii) any substance or mixture of substances intended for
11 use as a plant regulator, defoliant, or desiccant, and (iii) any substance which is intended to become
12 an active ingredient ~~thereof~~ in any substance defined in clause (i) and (ii).*

13 "Pesticide business" means any person engaged in the business of: distributing, applying, or
14 recommending the use of a product; or storing, selling, or offering for sale pesticides for
15 distribution directly to the user. The term "pesticide business" does not include (i) wood treaters not
16 for hire; (ii) seed treaters not for hire; (iii) operations which produce agricultural products unless the
17 owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the
18 business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that
19 agricultural producing operation in connection with commercial transactions; or (iv) businesses
20 exempted by regulations adopted by the board.*

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1 “Pesticide business location” means any location of a pesticide business with either a telephone
2 which is used to transact business or give advice, or where products, supplies and/or business mail
3 is delivered. Residences of service technicians who are employed by a licensed pesticide business
4 are exempt, if no business solicitation is conducted from that location.*

5 "Private applicator" means an applicator who uses or supervises the use of any pesticide which is
6 classified for restricted use for purposes of producing any agricultural commodity on property
7 owned or rented by him or his employer or, if applied without compensation other than trading of
8 personal services between producers of agricultural commodities, on the property of another
9 person.*

10 "Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified
11 as restricted by the Administrator of the United States Environmental Protection Agency.*

12 Part II

13 Procedures for Obtaining a Business License

14 2VAC20-40-20. General requirements for all pesticide businesses; exemptions.

15 A. Any person or business operating in Virginia, which, in exchange for compensation, sells, stores,
16 distributes, mixes, applies or recommends for use pesticides, shall obtain a valid pesticide business
17 license pursuant to this chapter. Each ~~separate outlet or location of a pesticide business~~ location
18 shall be licensed.

19 B. Exempted from the provisions of this chapter are the following:

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- 1 1. Merchants of limited quantities of ~~nonrestricted~~ non-restricted use pesticides who sell pesticides
- 2 primarily intended for limited household use;
- 3 2. Federal, state and local governmental agencies;
- 4 3. Certified applicators not for hire; including, ~~but not limited to, employees of golf courses, hotels,~~
- 5 ~~apartment complexes, and office complexes~~ those who use or supervise the use of pesticides as part
- 6 of their job duties only on property owned or leased by themselves or their employer; and
- 7 4. Providers of janitorial, cleaning or sanitizing services if the providers use no pesticides other than
- 8 sanitizers, disinfectants and germicides.
- 9 C. Application for a pesticide business license is made by submitting to the department (i) a
- 10 completed application form and (ii) a check or money order in the amount of the annual business
- 11 license fee established by the board.
- 12 D. Each applicant for a pesticide business license, or an employee designated by the applicant, shall
- 13 demonstrate to the commissioner his knowledge of (i) pesticide laws and regulations; (ii) potential
- 14 hazards of pesticides to man and the environment; and (iii) safe distribution, use, and disposal of
- 15 pesticides by passing a written examination prior to his being issued a business license. If the
- 16 applicant is already certified as a commercial applicator, he shall be exempt from the initial
- 17 examination requirement.
- 18 E. All licensed pesticide businesses shall maintain written records pertaining to their operations, as
- 19 required in this chapter.

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1 F. All licensed pesticide business locations or outlets which sell restricted use pesticides, or
2 distribute restricted use pesticides for purposes of selling, shall have a certified commercial
3 applicator present who shall bear immediate responsibility for the correct and safe operation of the
4 location or outlet. Each business shall notify the department of the name of the commercial
5 applicator assigned to each location or outlet, and shall also notify the department promptly of any
6 change in the applicator assignments during the license period.

7 G. All licensed pesticide businesses ~~which~~ that store, repack and distribute bulk pesticides shall
8 meet the requirements established by the board for the storage, repackaging and distribution of bulk
9 pesticides.

10 H. All pesticide business licenses shall expire at midnight on March 31 of each year. Licensees shall
11 renew their licenses annually by application to the department and payment of the annual fee on or
12 before close of business ~~January~~ March 31. The department shall charge a 20% penalty in addition
13 to the regular fee for renewal applications filed after ~~January~~ March 31.

14 2VAC20-40-30. Business licensing requirements for commercial applicators.

15 Any person mixing or applying any pesticide commercially in Virginia shall either (i) obtain a valid
16 pesticide business license pursuant to 2VAC20-40-20 A, or (ii) be employed by a currently licensed
17 pesticide business. The business license and fee shall not be considered a substitute for the
18 commercial applicator certification and fee. Possession of a business license does not authorize the
19 licensee to apply restricted use pesticides, nor does it allow a reduction of the fee necessary for an
20 applicator's certification.

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1 2VAC20-40-40. Business licensing requirements for pest management consultants.

2 A. Any person or business which recommends any pesticide for use commercially in Virginia shall
3 obtain a valid pesticide business license issued pursuant to 2VAC20-40-20 A of this chapter. This
4 provision shall exclude sales personnel of a licensed pesticide business, company training, technical
5 and sales representatives certified in the demonstration pesticide applicator category, and
6 governmental employees while performing in an official capacity.

7 B. The specialty categories for a pest management consultant shall conform to the commercial
8 applicator categories established pursuant to the Act. The pest management consultant shall meet
9 the requirements of the specific category or subcategory in which he is making recommendations
10 for pesticide use prior to being issued a business license.

11 Part III

12 Record Keeping

13 2VAC20-40-50. General record keeping requirements.

14 A. Records covered in this chapter shall, upon written request, be made available for inspection by
15 the commissioner or his designee during normal business hours. Records not readily available shall
16 be submitted to the commissioner within 72 hours if so requested in writing.

17 B. Persons possessing records covered in this part (2VAC20-40-50 et seq.) shall fully comply with
18 the requirements contained in the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC §136
19 F) and regulations pursuant thereto.

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1 C. Pesticide businesses shall maintain for a period of two years all records required by this chapter.

2 2VAC20-40-60. Record keeping of restricted use pesticide sales by ~~licensed~~ pesticide businesses.

3 Pesticide businesses ~~which~~ that sell restricted use pesticides shall maintain a record of each

4 restricted use pesticide sold. Each sales record shall contain the following:

5 1. Name, address, certified applicator number or business license number, and certificate or license

6 expiration date of the person to whom the restricted use pesticide was sold or delivered;

7 2. Date of sale;

8 3. Brand or common product name;

9 4. EPA registration number; and

10 5. Quantity of pesticide sold or delivered.

11 B. The restricted use pesticide sales record keeping requirement may be satisfied by invoices, if (i)

12 such invoices are kept separate from the licensee's other sales records, and (ii) the invoices contain

13 the above information.

14 2VAC20-40-65. Record keeping of pesticide applications by licensed pesticide businesses.

15 Licensed pesticide businesses shall maintain a record of each pesticide applied. This shall apply to

16 both general use and restricted use pesticides. Each record shall contain the:

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- 1 1. Name, address, and telephone number of customer and address or location, if different, of site of
- 2 application;
- 3 2. Name and certification number (or certification number of the supervising certified applicator) of
- 4 the person making the application;
- 5 3. Day, month and year of application;
- 6 4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;
- 7 5. Acreage, area, or number of plants or animals treated;
- 8 6. Brand name or common product name;
- 9 7. EPA registration number;
- 10 8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture
- 11 applied; and
- 12 9. Type of application equipment used.
- 13 2VAC20-40-70. Record keeping of pesticide applications by commercial applicators.
- 14 Commercial applicators shall maintain a record of each ~~restricted-use~~ pesticide applied. This shall
- 15 apply to both general use and restricted use pesticides. Each record shall contain the:
- 16 1. Name, address, and telephone number of customer and address or location, if different, of site of
- 17 application;

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- 1 2. Name and certification number (or certification number of the supervising certified applicator) of
- 2 the person making the application;
- 3 3. Day, month and year of application;
- 4 4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;
- 5 5. Acreage, area, or number of plants or animals treated;
- 6 6. Brand name or common product name;
- 7 7. EPA registration number;
- 8 8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture
- 9 applied; and
- 10 9. Type of application equipment used.

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Part IV

13

Evidence of Financial Responsibility

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2VAC20-40-80. Evidence of financial responsibility required of a licensed pesticide business.

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A. Prior to being issued a pesticide business license, a business shall furnish evidence of financial

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responsibility, consisting either of: ~~(i) a surety bond to the benefit of the board from a person~~

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~~authorized to do business in Virginia;~~ (ii) a liability insurance policy from a person authorized to do

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business in Virginia, or a certification thereof, protecting persons who may suffer legal damages as

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1 a result of the use of any pesticide by the applicant; ~~or (iii) a plan of self insurance which meets the~~
2 ~~requirements set forth below and is approved by the board.~~

3 ~~B. If the evidence of financial responsibility consists of a surety bond, the bond shall be in an~~
4 ~~amount specified in subsection E of this section, and shall cover liability arising out of handling,~~
5 ~~storage, application, use or misuse, or disposal of any pesticide; it shall also cover liability relating~~
6 ~~to completed operations.~~

7 ~~CB. If the evidence of financial responsibility consists of a~~ The liability insurance policy; shall meet
8 the following conditions ~~shall be met:~~

9 1. The certificate of insurance shall include the name of the insurance company, policy number,
10 insurance amount, type of coverage afforded, any exclusions relating to damage arising from the
11 use of pesticides, and expiration date of the policy. The policy shall cover liability arising out of the
12 handling, storage, application, use or misuse, or disposal of any pesticide; it shall also cover
13 liability relating to completed operations.

14 2. The policy shall be in an amount specified in subsection ~~E~~ C of this section.

15 3. The licensee shall forward a current certificate of insurance to the board at each insurance
16 renewal date.

17 ~~D. If the evidence of financial responsibility consists of a plan of self insurance, the following~~
18 ~~conditions shall be met:~~

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- 1 ~~1. The self insurer shall submit a written proposal of self insurance to the board for approval. The~~
2 ~~proposal shall include a master self insurance and security agreement and a balance sheet and~~
3 ~~income statement which reflects the actual financial condition of the business as of the last~~
4 ~~complete calendar or fiscal year preceding the date of the proposal. These documents shall be~~
5 ~~certified by a certified public accountant.~~

- 6 ~~2. The self insurer shall post collateral with the board in the amount of at least \$400,000. The~~
7 ~~collateral shall consist of the following: (i) negotiable instruments of the United States Government;~~
8 ~~(ii) escrow deposits established for the sole purpose of providing security for self insurance~~
9 ~~purposes; (iii) irrevocable letters of credit; or (iv) other security approved upon petition to the~~
10 ~~board.~~

- 11 ~~3. If the self insurer is unable to fulfill his obligations under the Act, he may petition the board to~~
12 ~~release the collateral posted. If such a withdrawal is necessary, the self insurer shall replace the~~
13 ~~security within 72 hours from the time of withdrawal in order to retain his certificate as a self-~~
14 ~~insurer.~~

- 15 ~~4. A certificate of self insurance, to be issued by the board, shall be renewed annually following~~
16 ~~appropriate review by the board. If his financial responsibility furnished no longer complies with~~
17 ~~this section, the self insurer shall immediately provide other evidence of financial responsibility.~~

- 18 ~~EC. The amount of financial responsibility as provided for in this section shall be a minimum of [(+)~~
19 ~~\$200,000] [\$100,000] for property damage[, subject to a \$1,000 deductible provision] in the case~~
20 ~~of licensees holding liability insurance policies, and [\$200,000 \$100,000] for personal injury [or~~

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1 death of one person]; [~~or (ii) a combined single limit of \$400,000 with a \$1,000 deductible and~~
2 ~~\$300,000 per occurrence]. The board may require additional evidence of financial responsibility~~
3 ~~based upon annual gross revenue of the applicant, if self-employed, or his employer's business, if~~
4 ~~not, and an assessment of the risks of the applicant or his employer's business to persons, property,~~
5 ~~and the environment.~~ The licensee shall maintain at least the minimum coverage at all times during
6 the license period, and shall notify the board at least 10 days prior to any reduction at the request of
7 the applicant or cancellation of such financial responsibility by the ~~surety or~~ insurer. If the
8 deductible of an applicant for a business license is greater than \$1,000, evidence of financial
9 responsibility shall be furnished to the board to satisfy the difference between the applicant's
10 deductible and the \$1,000 deductible. This evidence may consist of a financial statement ~~or a~~
11 ~~personal bond.~~

12 Part V

13 Revocation, Suspension or Denial of Business Licenses

14 2VAC20-40-90. Revocation of a business license.

15 In addition to the violative acts listed under §3.1-249.63 B of the Act, the following are grounds for
16 revocation by the board of a business license:

- 17 1. Failure to (i) submit records to the commissioner upon written request; or (ii) to permit any
18 person designated by the commissioner to have access to, and to copy such records of business
19 transactions as may be essential to carrying out the purposes of the Act.

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- 1 2. Operation of a pesticide business location or outlet without a certified commercial applicator
- 2 assigned to the location or outlet as required by this chapter.
- 3 ~~3. Failure of a self-insurer to provide, within 72 hours, other evidence of financial responsibility if~~
- 4 ~~the financial responsibility previously furnished no longer complies with the requirements of the~~
- 5 ~~Act or regulations promulgated there under.~~
- 6 43. Interference with the commissioner or his duly authorized agents in carrying out the duties
- 7 imposed by the Act.
- 8 54. Conduct by a licensee, as determined during the course of a hearing, which has or might have
- 9 resulted at any time in substantial danger to, or in unreasonable adverse effects on, the public
- 10 health, safety, or the environment.
- 11 65. Failure of a licensee to notify the department of any change in financial responsibility as
- 12 specified in 2VAC20-40-80 ~~E~~ C of this chapter.
- 13 76. Multiple violations of the Act or regulations pursuant thereto within a three-year period.
- 14 2VAC20-40-100. Summary suspension by commissioner.
- 15 A. The commissioner may suspend the pesticide business license of any person, without a hearing,
- 16 simultaneously with the institution of proceedings for a hearing, if he finds there is a substantial
- 17 danger to the public health, safety, or the environment ~~which~~ that warrants this action. Situations
- 18 ~~which~~ that may warrant suspension include, but are not limited to, the following:

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1 1. Operating a pesticide business or pesticide business outlet without a certified commercial
2 applicator on site as required by this chapter, when absence of the applicator presents a substantial
3 danger to the public health, safety, or the environment, as determined by the commissioner.

4 2. Refusal by a pesticide business, after receipt of a written request, to permit the commissioner or
5 his agent access to and to copy records of business transactions, when such refusal presents a
6 substantial danger to the public health, safety, or the environment, as determined by the
7 commissioner.

8 B. The commissioner shall institute proceedings for a hearing pursuant to ~~§9-6.14:12~~ 2.2-4020 of
9 the Code of Virginia simultaneously with any summary suspension. Subject to any provision of
10 procedure or chapter of the board for the processing of violations not inconsistent with this chapter:

11 1. The hearing shall be held within 60 days after the suspension; and

12 2. The hearing officer conducting the hearing shall have the authority to consider and address all
13 matters relating to the summary suspension, including but not limited to the withdrawing,
14 sustaining, or modifying thereof.

15 The commissioner or a conference officer appointed by the commissioner shall offer the person
16 whose license has been summarily suspended (hereinafter "the respondent") an opportunity to
17 appear in an informal conference, authorized by ~~§9-6.14:11~~ 2.2-4019 of the Code of Virginia, to be
18 held within three days after the summary suspension. The informal conference may consider,
19 subject to any provision of the board for the processing of violations, all matters relating to the

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1 summary suspension, including but not limited to the withdrawal, sustaining, or modifying thereof.

2 Nothing in this section authorizing consideration of matters by an informal conference shall be
3 construed to deny a respondent's right to a hearing.

4 C. No person may operate a pesticide business at any time when his license is suspended.

5 2VAC20-40-110. Denial of license by the commissioner.

6 A. The commissioner shall deny a business license to any applicant who does not submit all the
7 information required on the license application form, or who does not fully comply with all
8 requirements for licensing set forth in this chapter.

9 B. The commissioner may, after notice to a pesticide business applicant and after opportunity for
10 hearing, deny a pesticide business license to an applicant who has violated the pesticide law or
11 regulations of any state or competent authority so as to evidence a disregard for proper and safe
12 pesticide use; or if his license has been denied, suspended, nullified, withdrawn, revoked, or
13 otherwise terminated by any state or other competent authority.

14 C. Any applicant for a pesticide business license shall not engage in the activity for which he is
15 requesting a license until ~~it shall have been issued by the commissioner~~ shall have issued it.

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Part VI

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~~Effect on Other Regulations~~

19 ~~2VAC20-40-120. Regulations superseded or repealed.~~

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- 1 ~~The provisions of this chapter supersede 2VAC20-20-230, "Records," and 2VAC20-20-260,~~
- 2 ~~"Evidence of Financial Responsibility," of Chapter 20, Rules and Regulations for Enforcement of~~
- 3 ~~the Virginia Pesticide Law, which are hereby repealed.~~